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Isidro Leonardo Quito Cruz v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05–203 OF 2006
AHMAD MAAROP, MOHAMED APANDI AND BALIA YUSOF JJCA
15 SEPTEMBER 2011

C

Criminal Law — Dangerous drugs — Trafficking — 790.65g of cocaine — Appeal against conviction and sentence — Appellant apprehended at arrival hall of Kuala Lumpur International Airport after passing through immigration — Drug pellets discharged from appellant's stomach at hospital — Whether appellant was merely on transit — Whether appellant passed through immigration upon instructions by police officers — Whether accused to be charged under s 39B(1)(a) or s 21(6) of Dangerous Drugs Act 1952 — Appellant not in transit — Failure to rebut presumption of trafficking under s 37(da)(ix) of the Dangerous Drugs Act 1952 — Whether prosecution case proven beyond reasonable doubt — Dangerous Drugs Act 1952 ss 21(6) & 39B(1)(a)

D

E

Criminal Law — Dangerous Drugs Act — Trafficking — Drugs in transit — Applicability of s 21(6) of the Dangerous Drugs Act 1952 — Appellant apprehended at arrival hall of Kuala Lumpur International Airport after passing through immigration — Drug pellets discharged from appellant's stomach at hospital — Whether appellant was merely on transit — Whether appellant passed through immigration upon instructions by police officers — Whether accused to be charged under s 39B(1)(a) or s 21(6) of the Dangerous Drugs Act 1952 — Appellant not in transit — Dangerous Drugs Act 1952 ss 21(6) & 39B(1)(a)

F

G

Criminal Procedure — Trial — Prosecution's case — Failure of defence to put its case to prosecution witnesses during cross-examination — Whether having serious implication on accused's credibility and weight of evidence — Whether prosecution relieved of its duty to prove charge

H

The appellant — Isidro Leonardo Quito Cruz ('Isidro') a Peruvian was accused of trafficking in dangerous drugs, to wit, 790.65g of cocaine at the Arrival Hall, Kuala Lumpur International Airport ('KLIA') on 10 October 2006 at about 6.45am, an offence under s 39B of the Dangerous Drugs Act 1952 ('DDA').

I

PW19 (an immigration officer) who was on duty at the Arrival Hall, KLIA, testified that Isidro had come to the immigration counter where PW19 keyed into the computer the relevant particulars of Isidro's Peruvian passport (P23) and stamped the passport and the Imm 26 form (P27). When the immigration stamp was stamped on the passport, Isidro could enter and remain in Malaysia

for 90 days. PW19 then returned the passport to Isidro. At the material time PW4 and his team of police officers who were already keeping surveillance on Isidro stopped Isidro as he emerged out of the immigration counter, walking out towards the Arrival Hall. A search on Isidro's pockets and bags revealed no contraband. Isidro was then taken to a hospital where an X-ray showed his bowel was filled with foreign bodies. When Isidro's bowel movement was induced, 141 pellets containing dangerous drugs were discharged from his stomach through his anus. In his defence, Isidro claimed that he was only on transit and had only walked through the immigration counter upon being asked to do so by some police officers. Isidro claimed that a police officer had taken his passport and handed it over to the immigration officer manning the counter. On the drugs found in his stomach he admitted he swallowed it but disagreed that it was to be trafficked in Malaysia. Isidro was found guilty by the High Court, convicted and sentenced to death and hence this appeal. It was submitted that the learned trial judge erred in not amending the trafficking charge against Isidro to an offence under s 21(6) of the DDA. Learned counsel contended that the arrival portion of P27 which was not produced by the prosecution if produced would have shown that Isidro's version of the events on the day in question might have been true. He emphasised that Isidro had arrival at KLIA from Buenos Aires to take a connecting flight to Phuket and that Isidro had gone through the immigration counter only because the police called him. It was claimed that Isidro had not wanted to enter Malaysia.

Held, dismissing the appeal:

(1) As a matter of law PW4's evidence required no corroboration. However, PW4's evidence was corroborated in material particulars by the evidence of PW17 who at the material time was also in surveillance position outside the immigration counter with his own team of police officers. PW17 testified that at about 6.45am he saw Isidro walking through the immigration counter. PW4's evidence was also corroborated by PW19's evidence (see para 7).

(2) The allegation by Isidro that it was the police who handed the P23 to the immigration was a very serious allegation. It implied that PW4 and PW17 lied in their evidence on a material particular. It also implied that PW19 was also not telling the truth. If the claim by Isidro in his evidence was true there was no reason why it could not have been put to PW4, PW17 and PW19. Although failure on the part of the defence to put its case to material prosecution's witness can never by itself relieve the prosecution of its duty to prove the charge against the accused beyond reasonable doubt such failure by the defence did have serious implication on the accused's credibility and the weight to be attached to his evidence. The necessity of putting the essence of his case to the material prosecution's witness is not a mere technical rule of evidence. It is a rule of essential justice; *Alcontara a/l Ambross Anthony v Public Prosecutor*

[1996] 1 MLJ 209 referred; *Public Prosecutor v Dato Seri Anwar Ibrahim (No 3)* [1999] 2 MLJ 1 referred; *Wong Swee Chin v Public rosecutor* [1981] 1 MLJ 212 referred (see para 9).

(3) Isidro's defence was an afterthought and failed to raise any reasonable doubt in the prosecution's case. PW19 was a witness of truth whose evidence proved the sequence of events leading to his stamping of P23 and P27 with the immigration social visit pass stamp and then returning the same to Isidro (see para 11).

(4) After obtaining a social visit pass to enter and remain in Malaysia for 90 days from PW19, Isidro left the immigration counter manned by PW19 and was stopped and detained by PW4 as he was walking away towards the exit of the arrival hall. Isidro and the proscribed drugs were clearly not in transit. Hence, Isidro failed to rebut the presumption of trafficking under s 37(da)(ix) of the DDA on the balance of probabilities. The prosecution had proved beyond reasonable doubt the charge of trafficking against Isidro. Section 21(6) of the DDA clearly did not apply to this case (see para 13).

(5) The provisions under Part V of the DDA including the provisions under s 21(6) are intended only for the purpose of governing the importation and exportation of dangerous drugs for legitimate purposes (namely medical and scientific purposes as provided under the Single Convention on Narcotic Drugs 1961 ('the Single Convention'). The carrying of the proscribed drugs in the instant appeal by Isidro was not covered by the transit provisions under Part V of the DDA including s 21(6) (see para 14).

[Bahasa Malaysia summary

Perayu — Isidro Leonardo Quito Cruz ('Isidro') seorang warganegara Peru dituduh mengedar dadah berbahaya, iaitu 790.65g kokain di Balai Ketibaan, Lapangan Terbang Antarabangsa Kuala Lumpur (KLIA) pada 10 Oktober 2006 pada kira-kira 6.45 pagi, suatu kesalahan di bawah s 39B Akta Dadah Berbahaya 1952 ('ADB'). SP19 (seorang pegawai imigresen) yang bertugas di Balai Ketibaan, KLIA, memberi keterangan bahawa Isidro telah datang ke kaunter imigresen di mana SP19 memasukkan butiran-butiran relevan pasport Peru Isidro (P23) dan menyetem pasport tersebut dan borang Imm 26 (P27). Apabila setem imigresen disetem pada pasport, Isidro boleh memasuki dan berada di Malaysia selama 90 hari. SP19 kemudiannya memulangkan pasport kepada Isidro. Pada masa material SP4 dan sekumpulan pegawai polis yang mengawasi Isidro memberhentikan Isidro apabila dia keluar daripada kaunter imigresen dan berjalan keluar menuju Balai Ketibaan. Satu carian ke dalam poket Isidro dan beg-beg menunjukkan tiada penyeludupan. Isidro kemudiannya dibawa ke hospital di mana X-ray menunjukkan bahawa usus dia diisi dengan benda-benda asing. Apabila pergerakan usus Isidro didorong, 141

until yang mengandungi dadah berbahaya telah dilepaskan dari perutnya melalui duburnya. Dalam pembelaannya, Isidro mendakwa dia dalam perjalanan dan hanya berjalan menerusi kaunter imigresen apabila diminta oleh beberapa pegawai polis. Isidro mendakwa bahawa pegawai polis telah mengambil pasportnya dan memberikannya kepada pegawai imigresen yang mengendalikan kaunter. Dia mengakui dadah-dadah yang ditemui di dalam perutnya ditelan olehnya tetapi tidak bersetuju bahawa dadah tersebut akan diedarkan di Malaysia. Isidro didapati bersalah oleh Mahkamah Tinggi, disabitkan dan dijatuhkan hukuman mati dan oleh itu rayuan ini dibuat. Dihujahkan bahawa hakim perbicaraan terkhilaf apabila tidak meminda pertuduhan mengedar terhadap Isidro kepada kesalahan di bawah s 216 ADB. Peguamcara yang bijaksana menghujah bahawa bahagian ketibaan P27 yang tidak dikemukakan oleh pihak pendakwa raya, sekiranya dikemukakan, ia akan menunjukkan bahawa versi peristiwa Isidro pada hari tersebut mungkin adalah benar. Beliau menekankan bahawa ketibaan Isidro di KLIA dari Buenos Aires untuk menaiki penerbangan bersambung ke Phuket dan bahawa Isidro melalui kaunter imigresen hanya kerana polis memanggilnya. Didakwa bahawa Isidro tidak mahu memasuki Malaysia.

Diputuskan, menolak rayuan:

(1) Mengikut undang-undang, keterangan SP4 tidak memerlukan sokongan. Walau bagaimanapun, keterangan disokong dalam butiran-butiran material oleh keterangan SP17 yang pada masa material juga berada dalam kedudukan pengawasan di luar kaunter imigresen dengan sekumpulan pegawai polis. SP17 memberi keterangan bahawa sekitar 6.45 pagi, dia nampak Isidro berjalan menerusi kaunter imigresen. Keterangan SP4 juga disokong oleh keterangan SP19 (lihat perenggan 7).

(2) Pertuduhan oleh Isidro bahawa polis yang menyerahkan P23 kepada imigresen adalah pertuduhan yang sangat serius. Ia secara tidak langsung menunjukkan bahawa SP4 dan SP17 menipu dalam keterangan mereka mengenai butiran material. IA juga secara tidak langsung menunjukkan bahawa SP19 tidak memberitahu kebenaran. Sekiranya dakwaan oleh Isidro dalam keterangannya adalah benar, tidak terdapat alasan kenapa ia tidak dapat dikemukakan kepada SP4, SP17 dan SP19. Walaupun kegagalan bagi pihak pembelaan untuk menegakkan kesnya kepada saksi pendakwa raya tidak boleh secara sendirinya terlepas daripada tugas pendakwa raya untuk membuktikan pertuduhan terhadap tertuduh melangkaui keraguan munasabah, kegagalan pihak pembelaan memberikan implikasi serius ke atas kredibiliti tertuduh dan beban yang dikenakan ke atas keterangannya. Kepentingan meletakkan asas kesnya kepada saksi utama pendakwa raya bukanlah peraturan keterangan teknikal semata-mata. Ia merupakan peraturan utama keadilan; *Alcontara a/l Ambross Anthony v Public Prosecutor* [1996] 1 MLJ 209

dirujuk; *Public Prosecutor v Dato Seri Anwar Ibrahim (No 3)* [1999] 2 MLJ 1 dirujuk; *Wong Swee Chin v Public rosecutor* [1981] 1 MLJ 212 dirujuk (lihat perenggan 9).

(3) Pembelaan Isidro merupakan pemikiran selepas dan gagal untuk menimbulkan sebarang keraguan dalam kes pendakwa raya. SP19 merupakan saksi kebenaran di mana keterangan membuktikan peristiwa-peristiwa selepas yang membawa kepada dia menyetem P23 dan P27 dengan setem pas lawatan sosial imigresen dan memulangkannya kepada Isidro (lihat perenggan 11).

(4) Selepas mendapatkan pas lawatan sosial untuk memasuki dan berada di Malaysia selama 90 hari, Isidro meninggalkan kaunter imigresen yang dikendalikan oleh SP19 dan diberhentikan dan ditahan oleh SP4 apabila dia berjalan ke arah laluan keluar balai ketibaan. Isidro dan dadah yang diharamkan jelas tidak berada dalam perjalanan. Oleh itu, Isidro gagal untuk menyangkal anggapan pengedaran di bawah s 37(da)(ix) ADB atas imbangan kebarangkalian. Pendakwa raya membuktikan melangkaui keraguan munasabah pertuduhan mengedar terhadap Isidro. Seksyen 21(6) ADB secara jelas tidak terpakai di dalam kes ini (lihat perenggan 13).

(5) Peruntukan-peruntukan di bawah Bahagian V ADB termasuk peruntukan-peruntukan di bawah s 21(6) bertujuan hanya untuk mengawal pengimportan dan pengeksportan dadah-dadah berbahaya untuk tujuan yang dibenarkan (seperti bagi tujuan perubatan dan saintifik seperti yang dinyatakan di bawah Konvensyen Tunggal Dadah 1961 ('Konvensyen Tunggal'). Membawa dadah yang diharamkan dalam rayuan ini oleh Isidro tidak dilindungi oleh peruntukan-peruntukan transit di bawah Bahagian V ADB termasuk s 21(6) (lihat perenggan 14).]

Notes

For cases on dangerous drug, see 4 *Mallal's Digest* (4th Ed 2010 Reissue) paras 191–274.

For cases on prosecution's case, see 5(1)(2) *Mallal's Digest* (4th Ed 2010 Reissue) paras 5335–5353.

Cases referred to

Alcontara a/l Ambross Anthony v PP [1996] 1 MLJ 209, FC (refd)

Ong Lock Soon v Pendakwa Raya (Court of Appeal, Criminal Appeal No B-05–115 of 2006) [2011] MLJU 968 (refd)

PP v Dato Seri Anwar Ibrahim (No 3) [1999] 2 MLJ 1, HC (refd)

PP v Jorge Enrique Pellon Tellon [1998] 4 MLJ 278, CA (refd)

Wong Swee Chin v Public Prosecutor [1981] 1 MLJ 212, FC (refd)

Legislation referred to

Dangerous Drugs Act 1952 ss 2, 21(6), 37(da)(ix), 39B

Appeal from: Criminal Trial No 45–49 of 2001 (High Court, Shah Alam)

Edmund Bon (Chooi & Co) for the appellant.
Mohamad Abazafree bin Mohd Abas (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Ahmad Maarop JCA:

[1] The appellant — Isidro Leonardo Quito Cruz ('Isidro') a Peruvian was accused of trafficking in dangerous drugs, to wit, 790.6g of cocaine at the Arrival Hall, Kuala Lumpur International Airport (KLIA) on 10 October 2006 at about 6.45am, an offence under s 39B of the Dangerous Drugs Act 1952 ('DDA'). Isidro was found guilty by the High Court, convicted and sentenced to death. He preferred an appeal to this court.

THE PROSECUTION'S CASE

[2] Mohd Saipudin Mat Yusof (PW19), an immigration officer, was on duty at the arrival hall, KLIA, between 10pm on 9 October 2006 to 7am 10 October 2006. On 10 October 2006 at about 6.26am, Isidro came to the immigration counter where PW19 was on duty. PW19 keyed into the computer the relevant particulars of Isidro's Peruvian passport (P23). PW19 then stamped the passport with the immigration stamp. PW19 also stamped the imm 26 form (P27) which was presented together with the passport with the same stamp. PW19 indentified the stamps that he had made on P23 and 27. According to PW19, when the immigration stamp was stamped on the passport, Isidro could enter and remain in Malaysia for 90 days. PW19 then returned the passport to Isidro. At the material time, Insp Azri bin Ramli (PW4) and his team of police officers were already in surveillance position beyond the counter but not far from where PW19 was on duty. PW4 had earlier on, acting on information and direction he received from Inspector Basri Husain (PW17), arrived at KLIA and took up the aforesaid position with his team. At about 6.45am, PW4 saw Isidro emerging out of theimmigration counter, looking around and walking out towards the arrival hall holding a blue bag. PW4 accosted Isidro, flashed his police authority card and held Isidro's hand. PW4 made a quick search on Isidro's pockets but found no contraband. Isidro was then whisked into the narcotic examination room at the third floor of KLIA where PW4 made a search on Isidro as well as his bag. Amongst other documents, P23, MAS airline ticket to Phuket (P24), Boarding Pass KL-Phuket (P25), P27 and some currencies (in Pesos) were found. However, no contraband was found. The airline ticket revealed that Isidro had arrived

from Buenos Aires at about 5.45am. On the instruction of Insp Basri bin Husain (PW17), (who appeared to be unhappy with the result of the police search thus far), PW4 brought Isidro out of the arrival hall and proceeded to KLIA Police Station where he lodged a police report vide KLIA Sepang Report 6983/06. PW4 handed all the exhibits he had recovered thus far to PW17. From there, PW4 and PW17 took Isidro to Serdang Hospital where an X-ray which was done on Isidro's abdomen revealed that his bowel was filled with foreign bodies which appeared to be oblong in shape. Isidro was then warded in Ward 6C of the Hospital under police guard and surveillance, and medication was given to him to induce bowel movement.

[3] Between about 12.50pm 10 October 2006 to about 1pm on 15 October 2006 a total of 141 pellets suspected to contain dangerous drugs were discharged from Isidro's stomach through his anus. The 141 pellets were sent to the Chemist Department for examination and analysis upon which the chemist, Abdul Rahim bin Shadan (PW1) confirmed the pellets to contain 790.6g of cocaine — a dangerous drugs under the DDA.

[4] At the close of the prosecution's case, the learned trial judge found that the proscribed drugs was in Isidro's physical custody and control and that he had the required knowledge by reason of the placement of the drugs in his stomach. The learned trial judge was thus satisfied that Isidro was in actual possession of the proscribed drugs, and that since the weight of the drug was more than 40g, the presumption of trafficking under s 37(da)(ix) of the DDA was triggered. He therefore concluded that the prosecution had proved a prima facie case against Isidro and called upon Isidro to enter on his defence.

THE DEFENCE CASE

[5] Isidro gave evidence on oath. The substance of his evidences are as follows. His flight from Peru landed at KLIA on 10 October 2006 at about 5.30am. He said he was enroute to Phuket. Upon arrival at KLIA, he went to the transit section, and upon presentation of his airline ticket, he was given a boarding pass (P25) for departure to Phuket through Gate H. He went to Gate H. There, he was informed that his flight to Phuket was at 6.10pm that day and that if he wanted to take an earlier flight he had to change his boarding pass. He went to the information counter but found nobody. He then walked towards the immigration counter which was near the information counter. There were three persons at the immigration counter. He requested for assistance in Spanish but the three persons could not understand him. Isidro claimed that then he saw two persons in plain clothes somewhere beyond the immigration counter about 5 meters away from him, and one of them was waving at him. Isidro said he left his bags on the floor and walked towards the two persons. According to Isidro, the two persons said they were policemen. To get to the

two policemen, Isidro said he had to walk through the immigration counter. One of them then took Isidro's passport and handed it over to the immigration officer manning the counter. One of the two policemen made a telephone call, and a short while later, several plaincloth persons arrived at the immigration counter. One of them whom Isidro identified as Inspector Syed Nadzly (PW25) had Isidro's full name written on his palm and the two policemen referred to earlier by Isidro checked his passport with the name written on PW25's palm. Isidro was then brought to an office behind the immigration counter where he and his bag were searched. There was no Spanish interpreter present when he and his bag was searched. Isidro claimed that if the two policemen he referred to earlier had not called him, he would not have passed through the immigration counter. He said he went to the two policemen when they waved at him because he thought they could help him change to an earlier flight. On the drugs found in his stomach he admitted he swallowed it but disagreed that it was to be trafficked in Malaysia.

DECISION

[6] Before us the learned counsel representing Isidro informed us that he was relying only on one issue — whether the learned trial judge erred in not amending the trafficking charge against Isidro to an offence under s 21(6) of the DDA. This, learned counsel argued was connected with the question as to how the learned trial judge evaluated the evidence. Learned counsel contended that the learned trial judge placed undue weight on the evidence favourable to the prosecution's case, in particular P27 which did not have the third portion — the arrival portion, but did not consider evidence which was favourable to the defence, in particular the collective inference arising from exhs P25 and P31 (a piece of paper bearing the name of a hotel in Phuket) which according to learned counsel, supported the argument that Isidro was in transit. Learned counsel also contended that the arrival portion of P27 which was not produced by the prosecution if produced would show that Isidro's version of the events on the day in question might have been true. Learned counsel urged us to carefully consider Isidro's defence. He emphasised that Isidro had arrival at KLIA from Buenos Aires to take a connecting flight to Phuket. Learned counsel argued that Isidro had gone through the immigration counter because the police called him. Isidro did not want to enter Malaysia. Submitting further, learned counsel argued that there was no evidence that the drugs were to be distributed anywhere in KLIA before Isidro's arrest or that it was meant for local distribution. There was no evidence that Isidro was going to meet anyone in Malaysia or had booked a hotel in Malaysia. Learned counsel then pleaded the same defence which was submitted before the trial judge, namely — the drugs found on Isidro was meant to be transported to Phuket and not for consumption in Malaysia, and that his presence in KLIA was merely as a transit passenger thus attracting the application of s 21(6) of the DDA and not the

trafficking provisions. Learned counsel added that even if it was a fact that Isidro had passed through the immigration counter, the defence that he was in transit under s 21(6) was still available. In support of his submission learned counsel relied on *Public Prsoecutor v Jorge Enrique Pellon Tellon* [1998] 4 MLJ 278 ('the Pellon's case'). He prayed that the appeal be allowed and the conviction under s 39B be substituted with an offence under s 21(6) of the DDA. For reasons which we will set out in a moment we cannot accept the learned counsel's submission.

[7] We start with the judicial appreciation of the evidence by the learned trial judge. We find that he had considered Isidro's evidence and tested it with the evidence adduced by the prosecution which he accepted as the basis for finding a prima facie case of trafficking against Isidro. The prosecution's case as to what happened on the day in question at the immigration counter at the arrival hall was established by the evidence of PW4, PW17 and PW19. PW4 testified that at about 6.45am on 10 October 2006 he saw Isidro emerging out of the immigration counter and walking towards the arrival hall holding a blue bag. Under cross-examination he reaffirmed that evidence when he said he saw Isidro when the latter came out the immigration counter (*saya melihat OKT apabila dia keluar dari kaunter Immigresen*). PW4 disagreed that he had called out to Isidro a number of times before he saw Isidro at the immigration counter. PW4 also disagreed that one of his men had called out to Isidro before he saw Isidro entering the immigration counter. As a matter of law PW4's evidence required no corroboration. However, PW4's evidence was corroborated in material particulars by the evidence of PW17 who at the material time was also in surveillance position outside the immigration counter with his own team of police officers. PW17 testified that at about 6.45am he saw a male person (whom he later identified in court as Isidro) wearing a long sleeved shirt walking through the immigration counter:

> Jam 6.45 pagi seorang lelaki berkemeja lengan panjang yang membawa 1 bag trolley dan satu pouch hitam di pinggangnya melintasi pos kawalan Immigresen.

[8] More importantly, PW4's evidence was also corroborated by PW19's evidence. PW19's testified that on 10 October 2006 at about 6.25 am Isidro came to the immigration counter where he was on duty. PW19 keyed into the computer the relevant particulars from Isidro's passport (P23). PW19 then stamped P23 with the immigration stamp. He also stamped on P27 which was presented together with P23, with the same stamp. He identified the stamps he had made on P23 and P27. He also identified the note — MH 202 written by him on P23 and P23 denoting Isidro's flight number. According to PW19, when the immigration stamp was stamped on P23, Isidro could enter and remain in Malaysia for 90 days. Indeed, the stamps on P23 and P27 bear the

words, 'permitted to enter and remain in West Malaysia and Sabah for ninety (90) days on social visit only from the date shown above'. PW19 said he then returned P23 to Isidro.

[9] As against the evidence by the prosecution as aforesaid, there is evidence by Isidro's, the substance of which we have set out elsewhere in this judgment. Isidro did not deny that he walked through the immigration counter. However, the gist of his evidence was that he did so because one of the two persons whom he saw at a spot beyond the immigration counter was waving at him. Isidro said the two persons said they were policemen. According to Isidro one of the two policemen took his passport and handed it over to the immigration officer manning the counter. Isidro said if the two policemen had not called him, he would not have passed through the immigration counter. Isidro also claimed that he did not understand English, and that he had no intention of coming into Malaysia. The gist of Isidro's evidence which we have just set out constituted the most important elements of his defence. The learned trial judge found that Isidro's claim that he had no intention of coming into Malaysia was refuted by P27, which Isidro admitted under cross-examination to be in his own hand writing. The learned judge held that the filling in of the relevant particulars in P27 in his hand writing constituted an overt act which was part of the process of coming into Malaysia, (as opposed to merely remaining in the transit section of KLIA). PW19's evidence and the stamps on P23 and P27 established that Isidro's was permitted to enter and remain in West Malaysia and Sabah for 90 days from 10 October 2006 on a social visit pass. PW4's and PW17's evidence in turn established that Isidro had in fact entered West Malaysia in the sense just described. The learned trial judge also held that Isidro's act of filling in P27 which was in English showed that he (Isidro) was not ignorant of the English language which he sought to make out in his evidence. The learned trial judge also found that in the course of giving evidence under cross-examination, at least on two occasions, Isidro had responded to questions posed by the learned deputy public prosecutor even before the interpretation was made by the interpreter. Thus upon assessing Isidro's demeanor, the learned trial judge made the finding that Isidro was not illerate and ignorant of the English language. On the evidence available we are of the view that the learned trial judge was entitled to arrive at that finding which we have no reason to say was erroneous. This bring us back to the most important elements of Isidro's defence which we have set out. The learned judge found that PW19's evidence was not challenged under cross-examination in accordance with that defence. Indeed no question was put to PW19 that it was the police and not Isidro who handed P23 to him. In this regard when PW17 gave evidence under cross-examination it was never put to him that it was the police who handed the passport to the officer and not Isidro. In respect of PW4, learned counsel referred to us pp 23–29 of Vol 1 of the appeal record, where he said PW4's evidence was challenged. Although it is true that PW4's evidence was challenged on a number of issues, it was never put

to him that it was the police who actually handed P23 to the immigration officer, not Isidro. The allegation by Isidro in his evidence that it was the police who handed the P23 to the immigration was a very serious allegation. It implied that PW4 and PW17 lied in their evidence on a material particular. It also implied that PW19 was also not telling the truth. If the claim by Isidro in his evidence was true there was no reason why it could not have been put to PW4, PW17 and PW19. Although failure on the part of the defence to put its case to material prosecution's witness, can never by itself relieve the prosecution of its duty to prove the charge against the accused beyond reasonable doubt (see *Alcontara a/l Ambross Anthony v Public Prosecutor* [1996] 1 MLJ 209), such failure by the defence did have serious implication on the accused's credibility and the weight to be attached to his evidence. The necessity of putting the essence of his case to the material prosecution's witness is not a mere technical rule of evidence. It is a rule of essential justice. In *Public Prosecutor v Dato Seri Anwar Ibrahim (No 3)* [1999] 2 MLJ 1, at pp 193–194 Augustine Paul J (as he then was) said:

> The nature of the defence is to be ascertained not only from the evidence of the accused himself but also from the trend of the cross-examination of the prosecution witnesses and from the arguments of the accused's counsel at the close of the trial (see *Kuli E Ors v Emperor* AIR 1930 Call 442). *It is therefore important for the accused to out his essential and material case to the prosecution witnesses in cross-examination. This is a principle of essential justice and was neatly stated by Mukhrji J in AEG Carapiet v AY Derderian* AIR 1961 Cal 359 *in the following terms:*
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> *The law is clear on the subject. Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed at all. It is wrong to think that is merely a technical rule of evidence. It is a rule of essential justice.* It serves to prevent surprise at trial and miscarriage of justice, because it gives notice to the other side of the actual case that is going to be made when the turn of the party on whose behalf the cross-examination is being made comes to give and lead evidence by producing witnesses. *It has been stated on high authority of the House of Lords that this much a counsel is bound to do when cross-examining that he must put to each of his opponent's witnesses in turn, so much of his own case as concerns that particular witness or in which that witness had any share. If he asks no question with regard to this, then he must be taken to accept the plaintiffs account in its entirety. Such failure leads party when he has finished the evidence of his witnesses and when he has no further chance to meet the new case made which was never put and secondly, because such subsequent testimony has no chance of being tested and corroborated.*

[10] In *Wong Swee Chin v Public Prosecutor* [1981] 1 MLJ 212 at p 213, the Federal Court said:

> A correct statement of the law is that failure of the defence to cross-examine the prosecution witnesses on the matter merely goes to the credibility of their testimony, to wit, the fact they found the ammunition in the appellants's trouser pockets

remains unshaken. *On this point we need only sav there is a general rule that failure to cross-examine a witness on a crucial part of the case will amount to an acceptance of the witness's testimony. But as is common with all general rules there are also exceptions as pointed out in judgment of the Supreme Court of New Zealand in Transport Ministry v Garry* where Haslam J said at p 122:

> In *Phipson on Evidence* (11th Ed), para 1544 the learned authors suggest examples by way exception to the general principle that failure to cross-examine will amount to an acceptance of the witness's testimony, viz where.
>
> … The story is itself of an incredible or romancing character, or the abstention arises from mere motives of delicacy … or when counsel indicates that he is merely abstaining for convenience, e.g to save time. And where several witnesses are called to the same point it is not always necessary to cross-examine them all.

[11] Having considered Isidro's evidence and upon testing it with PW4's, PW17's and PW19'a evidence, the learned trial judge concluded Isidro's defence to be an afterthought, and that Isidro's evidence failed to raise any reasonable doubt in the prosecution's case. The learned trial judge accepted PW19 as a witness of truth whose evidence proved the sequence of events leading to his stamping of P23 and P27 with the immigration social visit pass stamp and then returning the same to Isidro. This is what the learned judge said in his judgment:

> The evidence of the immigration officer SP19 that it was the accused who handed the passport P23, the disembarkation card P27 and he stamped the visit pass for 90 days on the accused passport was never challenged by the defence during the prosecution stage nor did the defence suggest to SP19 that it was the police who handed the passport to him. More importantly the defence never at any time suggest to the prosecution's witnesses SP4 and SP17 that it was the police and not the accused that handed over the passport to the immigration officer. The evidence aforesaid to my mind negated the defence counsel's contention that he was not on Malaysian soil. On this score I find that SP19 is a witness of truth who testified as to the sequence of events leading to his impressing the immigration visit pass stamp on the accused's passport. His evidence is not only consistent but credible. SP19 to my mind has no interest or motive to frame up the accused. The accused testimony that he did not realise that by crossing through the immigration counter he is on Malaysian soil to my mind is a mere denial and in any event ignorance of the law does not and cannot rebut the statutory presumption arising under s 37(da) of the Act.

[12] We agree with his conclusion. In considering P27 we have not lost sight of learned counsel's contention that the arrival portion (which was not produced) if produced would show that Isidro's version of the events on the day in question might have been true. We are unable to accept that contention. There is no evidence to show that that document was withheld or suppressed by the prosecution. In his evidence, PW19 explained that there were two

portions to the Imm 26 form (P27) — the arrival and the departure portions. PW19 said the arrival portion was kept by the immigration, and the departure portion was put in the passport to be submitted to the immigration when the passport holder was to depart from Malaysia. Elaborating on the arrival portion, under cross-examination PW19 said he did not have it with him as it had been sent to and kept at the Immigration Headquarters, Putrajaya. The investigation officer (PW25) wrote to the director general of the immigration on 7 July 2009 (P72) to obtain the arrival portion, but was informed that it could not be found. PW25 was informed that the arrival portion would be disposed off three months after the date of arrival. That evidence by PW25 was not challenged by the defence. In the light of PW19's, PW4's, PW17's evidence as well as Isidro's own admission that he filled in P27 in his own hand writing, we could not see how the arrival portion would show that Isidro's version might have been true or raise reasonable doubt in the prosecution's case. With the evidence as adduced by the prosecution and accepted by the learned trial judge, it is clear that the facts of this case are materially different from the *Pellon*'s case. In the *Pellon*'s case, Pellon the accused, a Peruvian, was on a flight from Buenos Aires on 24 November 1996 and this was evident from his airline ticket (P26) issued by Malaysia Airlines. He arrived by Malaysia Airlines flight No MH202 and landed at Terminal One, Sultan Abdul Aziz Shah Airport (LTSAAS). The Court of Appeal found that he was obviously in transit, which was indicated by the top portion of the special pass issued to him on 26 November 1996 on which his arrival flight No 'MH202' was written. He was to leave for Den Pasar on 26 November 1996 by Malaysian Airline flight No MH715 departing at 9.20am. This was proven by his airline ticket (P26) and his boarding pass (P23). The court found that further evidence to show that he did not intend to enter West Malaysia was also provided by P26 which stated that he departed from Buenos Aires for Kuala Lumpur on MH202 on 24 November 1996 at 8.35pm and he landed at Terminal One LTSAAS. He was to depart from Kuala Lumpur almost immediately upon arrival. Further, his passport was not endorsed for entry into Malaysia. At about 8.25am on 26 november 1996, Pellon walked through the 'Walk Through Detector' at Departure Gate C16 of Terminal One LTSAAS, where, upon a 100% body search conducted on him by PW5 (except inside his shoes), nine packages were found strapped to his inner short pants. The chemist later confirmed the nine packages to contain 1,846.4g of cocaine. This formed the subject matter of original second amended charge against Pellon under s 39B of the DDA. Pellon was then taken to Balai Polis Damansara Utama where before being placed in the police lock-up, a body examination was conducted on him, in the course of which two more packages were found in his shoes. The chemist confirmed that the two packages contained 414.8g of cocaine. This formed the subject matter of the first amended charge under s 39B against Pellon. At the close of the prosecution's case, the learned High Court judge amended the said charges against Pellon to charges for offences under s 21(6) of the DDA. On appeal, it was contended by the public prosecutor that in view of the quantity of cocaine,

the offence of trafficking had been committed. In his judgment, speaking for this court which dismissed the public prosecutor's appeal, Lamin Mohd Yunus PCA said:

> Our Dangerous Drugs Act 1952 defines the term 'in transit as found in s 2 thus:
>
> In transit means taken or sent from any country and brought into Malaysia by land, air or water (whether or not landed or transhipped in Malaysia) for the sole purpose of being carried to another country either by the same or another conveyance;
>
> Of course as we have pointed out it is an offence for anyone to export from Malaysia (s 19) or import into Malaysia (s 20) any dangerous drug without being in possession of a valid authorisation or licence. *It is equally an offence for anyone who 'brings any dangerous drug into Malaysia 'in transit' otherwise than in accordance with the provisions of s 21.* By definition a drug 'in transit' means 'taken or sent from any country and *brought into* Malaysia' by land, air or water 'for the *sole* purpose of being carried to another country'. To qualify for the drug to be 'in transit', it must come from a country outside Malaysia 'for the sole purpose of being carried to another country'. In the terms of the 'purpose' being 'solely' for carriage to another country, it must mean that there shall not be any local distribution or consumption of the drug by any local resident or anyone at all within Malaysia. To be guilty for an offence in transit under sub-s (6) of s 21 there must be a breach of the provisions of sub-s (1) of the said section. Perhaps it may be of interest to note that the Act makes no express mention as to whether the person in possession of the drug must also be 'in transit' in the context of the Immigration laws. Perhaps the word 'bring' appearing in sub-s (1) is capable of giving such an interpretation. However this was not a subject for contest in the present case, for it was not disputed that the accused before us was clearly 'in transit'. Now *to offend against sub-s (1). the person who brings the dangerous drug is not in possession of a valid export or import authorisation. In other words it is not accompanied with a valid export authorisation from a foreign country exporting it to another country outside Malaysia and at the same time it is also without a valid import authorisation from the other country.* Sub-s (2) on the other hand merely gives the relevant Minister or any officer properly authorised by him the power to seize and detain the drug in transit if he has 'reasonable grounds for believing' that the accompanying authorisation or diversion certificate is false or that it has been obtained by fraud or wilful misrepresentation of a material particular. If after investigation, he is satisfied that the authorisation is valid or that it has not been obtained by fraud or misrepresentation he shall then release the drug. Sub-s (3) gives the Minister or any authorised officer the power to seize and detain the drug if it is not accompanied with a valid authorisation or diversion certificate and that the drug comes from a country not a party to the convention. While sub-s (4) stipulates that if the drug in transit requires storage for the time being, it shall only be 'stored and dealt with' on the direction of the Minister and it can only be moved in accordance with a removal licence granted under s 22.
>
> In the present case, the drug was not accompanied with any form of authorisation papers, and there was no evidence that the drug was physically being distributed anywhere in the airport before the arrest or for the purpose of distributing locally. He was found in possession of the drug when he was about to board the aircraft that was bound for Den Pasar. The learned deputy even suggested that as the drug was

found hidden on the body of the accused, he must have intended to traffic in the drug. There is no such presumption in the Act however. The Act neither stipulates, nor describes the manner by which the drug is to be brought or carried into country. Perhaps it may even be argued that because the accused had the drug hidden he did not want it to be detected because he wanted solely for the purpose of carrying it to another country in this case (Indonesia). So there was no intention to traffic in Malaysia.

The next question is whether the presumption of trafficking under s 37(da) of the Act is attracted in view of the amount involved. When a dangerous drug is 'in transit' in our view the amount is irrelevant because it is completely a different kind of act and therefore a different kind of offence. It is an offence of being 'in transit' without being accompanied with a valid authorisation. The amount of the drug involved ought not and should not make any difference as to the character of the act. The very language determines the issue. As we have earlier observed that the meaning of being 'in transit' is for the 'sole purpose' of being carried to another country and therefore Malaysia will not be a country where the drug will be distributed and consumed and as such the presumption of trafficking cannot arise. Perhaps there is wisdom in the legislature for having incorporated the offence of being 'in transit' because realising that the local populace will not suffer the consequence of distribution and consumption at the hands of the carrier, the carrier need not suffer the stringent application of our law. To deprive him of the drug by seizure accompanied by a small penalty would be more than sufficient.

[13] So, in the *Pellon*'s case, Pellon was the person who brought the proscribed drugs into Malaysia, and that he was caught in the process of exporting the proscribed drugs out of the country to Indonesia. The court found as a fact that he did not intend to enter West Malaysia. His passport was not endorsed for entering into Malaysia. Indeed, in that case there was no dispute that Pellon and the drugs were on transit. In the instant case after obtaining a social visit pass to enter and remain in Malaysia for 90 days from 10 October 2006 from PW19, Isidro left the immigration counter manned by PW19 and was stopped and detained by PW4 as he was walking away towards the exit of the arrival hall. So, unlike the *Pellon*'s case, Isidro and the proscribed drugs were clearly not in transit. Thus the learned judge was right when he held that Isidro failed to rebut the presumption of trafficking under s 37(da)(ix) of the DDA on the balance of probabilities and that the prosecution had proved beyond reasonable doubt the charge of trafficking against Isidro. Section 21(6) of the DDA clearly did not apply to this case.

[14] The reasons which we have given thus far are sufficient to uphold the learned judge's decision in convicting Isidro of the offence of trafficking as charged. However, there is an additional and separate reason why s 21(6) of the DDA does not apply in this case. It is this. As would be recalled, learned counsel contended that even if it was a fact that Isidro had passed through the immigration counter, the defence that he was in transit under s 21(6) was still

available. The reason given by learned counsel was that there was no evidence that the proscribed drugs was meant for local distribution and that there was no evidence to show that Isidro was going to meet anyone in Malaysia or had booked a hotel in Malaysia. The drugs found on Isidro was meant to be transported to Phuket and not for consumption in Malaysia. He relied on the provisions under s 21(6) and s 2 of the DDA which defined 'in transit' to mean taken or sent from any country and brought into Malaysia by land, air or water (whether or not landed transhipped in Malaysia) for the *sole purpose* of being carried to another country either by the same or another conveyance. We are unable to accept learned counsel's submission, which appears to have stretched the scope of the provision under s 21(6) of the DDA too dangerously far. We are of the view that the provisions under Part V of the DDA including the provisions under s 21(6) are intended only for the purpose of governing the importation and exportation of dangerous drugs for legitimate purposes (namely medical and scientific purposes as provided under the single convention on Narcotic Drugs 1961 ('the Single Convention'). We derive support for our view from our decision in *Ong Lock Soon v Pendakwa Raya* (Court of Appeal, Criminal Appeal No B-05–115 of 2006) [2011] MLJU 968. In that case Ong was caught with three plastic packets of heroine tied to his body as he passed through the walk through metal detector at Gate C16 KLIA to board flight MH123 to Sydney. His defence was that one Ah Thong (had who had arrived with the drugs from Hong Kong) gave the drugs to him (which Ong thought to be Chinese Herbs) in one of the toilets in the transit lounge KLIA to be brought to Sydney. In his submission, Ong called in aid s 21(6) of the DDA. Heavy reliance was also placed on the *Pellon*'s case. The High Court convicted him of the offence of trafficking as charged. We dismissed his appeal and affirmed the conviction and death sentence on him. We accepted the learned judge's reasoning that on the facts the *Pellon*'s case was materially different from *Ong*'s case resulting in her finding that s 21(6) of the DDA did not apply to *Ong*'s case. We also accepted the additional reason given by the learned judge to explain why in her view s 21(6) of the DDA did not apply to *Ong*'s case. In this regards, in the course of our judgment we said:

> The predecessor of the DDA was the Dangerous Drugs Ordinance 1952 (the DDO). The DDO was amended several times until today. It was revised in 1980 from which point it assumed the name DDO. To ensure conformity with the provisions of the single convention, a number of amendments were made to the DDO by the Emergency (Essential powers) Ordinance No 82 of 1971. In 1972, the Emergency (Essential powers) Ordinance No 82 of 1971 was repealed by the Dangerous Drugs (Amendment) Act 1972 (Act 112). At the same time Act 112 amended the DDO in the same manner specified in the Schedule thereto. Part V of the DDO was maintained. In tabling the bill in the *Dewan Rakyat*, the then honourable Minister of Health emphasised that the amendment was necessary to bring the DDO in accord with the single convention of which Malaysia was a state party since 1967:

Tuan Speaker, saya mohon untuk membentangkan suatu Rang Undang-undang untuk mengekalkan Ordinan Dharurat (Kuasa-kuasa Perlu) Bil 82 tahun 1971 yang telah diisytiharkan oleh Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong di bawah kuasa-kuasa darurat kepada satu undang-undang yang kekal. Rang Undang-undang ini iaitu untuk meminda beberapa seksyen tertentu Ordinan Dadah-dadah Berbahaya 1952 supaya:

(a) Ordinan Dadah-dadah Berbahaya sejajar dengan peruntukan-peruntukan di dalam 'Single Convention on Narcotic Drugs 1961' yang mana Malaysia adalah salah sebuah negara anggotanya. 'The Single Convention 1961' adalah mewakili langkah umum terbesar dari perjanjian antarabangsa berhubung dengan menguatkan dan membaiki system kawalan antarabangsa mengenai dadah-dadah narkotik dalam mana Malaysia telah memberi kerjasama yang sepenuhnya pada semua masa. Konvensyen ini telah diluluskan dalam bulan Disember 1962 oleh Perhimpunan Besar Bangsa-bangsa Bersatu sejajar dengan Artikel 41 Konvensyen itu. Konvensyen itu adalah berkuatkuasa dari 1 Januari 1965 kerana bilangan tandatangan-tandatangan yang perlu iaitu 40 di bawah Konvensyen itu telah pun diterima sebelum 1 Januari 1965. Kerajaan Malaysia telah menyampaikan surat persetujuannya dengan Setiausaha Majlis Bangsa-bangsa Bersatu dalam bulan Julai 1967.

(b) Untuk menyediakan langkah kawalan yang lebih ketat dan memandangkan kecenderungan pengambilan dadah secara haram bertambah, menguntukkan hukuman-hukuman yang lebih berat bersabit dengan kesalahan-kesalahan terhadap Ordinan ini.

According to the Training Material of the Single Convention, the single convention aims to restrict the use of narcotic drugs to medical and scientific purposes and to prevent their diversion and abuse:

The Single Convention is the result of the recognition by the United Nations of the fact that the adequate provision of narcotic drugs for medical purposes is indispensable for the welfare of mankind, as well as of the fact that drug addiction is a worldwide social and economic threat. Therefore, *the Single Convention aims to restrict the use of narcotics drugs to medical and scientific purposes and to prevent their diversion and abuse, while at the same time ensuring their availability for legitimate purposes.* It includes control measures over the cultivation of plants that serve as sources of raw material of narcotic drugs, provisions regarding the obligations of national authorities in the application of control measures over the production, manufacture, trade, and distribution of narcotic drugs, as well as provisions for the medical treatment and rehabilitation of addicts.

The Single Convention also emphasises the role of the International Narcotics Control Board (INCB) *in ensuring a balance between the supply of and demand for narcotic drugs for medical and scientific purposes and helping to prevent the illicit drug cultivation, production, manufacture, traffic and use.* The single convention stresses the need for cooperative and coordinated international action in dealing with the problems associated with drug abuse.

The aforesaid aim is clear from the preamble to the Single Convention which states:

The Parties,

Concerned with the health and welfare of mankind,

Recognizing that the the medical use of narcotic drugs continues to be indispensable for the relief of pain and suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes,

Recognizing that addiction to narcotic drugs constitutes a serious evil for the individual and is fraught with social and economic danger to mankind,

Conscious of their duty to prevent and combat this evil,

Considering that effective measures against abuse of narcotic drugs require co-ordinated and universal action,

Understanding that such universal action calls for international co-operation guided by the same principles and aimed at common objectives,

Acknowledging the competence of the United Nations in the field of narcotics control and desirous that the international organs concerned should be within the framework of that Organization,

Desiring to conclude a generally acceptable international convention replacing existing treaties on narcotic drugs, limiting such drugs to medical and scientific use, and providing for continuous international co-operation and control for the achievement of such aims and objectives.

Hereby agree as follows:

The aim to restrict the use of narcotic drugs to medical and scientific purposes is also evident from article 4 of the Single Convention which provides:

GENERAL OBLIGATIONS

The parties shall take such legislative and administrative measures as may be necessary:

(a) To give effect to and carry out the provisions of this Convention within their own territories;

(b) To co-operate with other States in the execution of the provisions of this Convention;

(c) *Subject to the provisions of this Convention, to limit exclusively to medical and scientific purposes the production, manufacture, export, import, distribution of, trade in. use and possession of drugs.*

According to the Training Material of the Single Convention article 31 of the Single Convention contains special provisions regarding international trade of narcotic drugs. Each country must participate in the control of international trade by controlling its exports and imports of narcotic drugs. Article 31 contains provisions which require a license regime for the authorisation of export and import of substance under the control of the Convention. Regarding article 31, in *Ng Kwok Chun & Anor v Public Prosecutor* [1993] 1 SLR 55 the Singapore Court of Criminal Appeal made the following germane remarks:

The spirit of the Convention as regards illegal trade in controlled drugs is represented by the provisions of art 31 which, where relevant, read:

> 10 Consignments of drugs entering or leaving the territory of a party not accompanied by an export authorisation shall be detained by the competent authorities.
>
> 11 A party shall not permit any drugs consigned to another country to pass through its territory, whether or not the consignment is removed from the conveyance in which it is carried, unless a copy of the export authorisation for such consignment is produced to the competent authorities of such party.
>
> …
>
> 14 The provisions of paras 11–13 relating to the passage of drugs through the territory of a party do not apply where the consignment in question is transported by aircraft which does not land in the country or the territory of transit. If the aircraft lands in such territory, those provisions shall be applied so far as circumstances require.

These provisions make it abundantly *clear that the Convention imposes an obligation on its signatories to ensure that their territory is not used as a transit point for the illegal movement of drugs.*

The object of preventing the improper use of drugs or their diversion for illicit purposes could also be discerned from the provisions of Article 32 of the Single Convention:

> (1) The international carriage by ships or aircraft of such limited amounts of drugs as may be needed during their journey or voyage for first-aid purposes or emergency cases shall not be considered to be import, export or passage through a country within the meaning of this Convention.
>
> (2) Appropriate safeguards shall be taken by the country of registry to prevent the improper use of the drugs referred to in paragraph 1 or their diversion for illicit purposes. The Commission, in consultation with the appropriate international organizations, shall recommend such safeguards.
>
> (3) Drugs carried by ships or aircraft in accordance with paragraph 1 shall be subject to the laws, regulations, permits and licences of the country of registry, without prejudice to any rights of the competent local authorities to carry out checks, inspections and other control measures on board ships or aircraft. The administration of such drugs in the case of emergency shall not be considered a violation of the requirements of article 30, paragraph 2b).

In the light of the foregoing reasons we agree with the learned trial judge that the provisions under Part V of the DDA are intended only for the purpose of governing the importation and exportation of dangerous for legitimate purposes (namely medical and scientific purposes as provided under the Single Convention), and for the purpose of governing acts affecting such drugs while in transit. In other words regarding the specific defence ventilated before us, we are of the view that the provisions relating to dangerous drugs in transit under Part V of the DDA are intended to apply to dangerous in transit for legitimate purposes. Even if Ong's

evidence is accepted, the bringing of the proscribed drugs into Malaysia for the purpose of being carried to Australia by Ong for the use of Huan Choo's relative was not covered by the transit provisions under Part V of the DDA including s 21(6). The acceptance of learned counsel's contention would result in Malaysia being a very attractive and potentially safe — transit haven for drug traffickers from all over the world. Such a consequence is to our mind absurd, contrary to international comity and certainly never intended by the legislature.

[15] Applying the aforesaid reasoning in *Ong Lock Soon*'s case, we hold that the carrying of the proscribed drugs in the instant appeal by Isidro is not covered by the transit provisions under Part V of the DDA including s 21(6). The acceptance of learned counsel contention would result in Malaysia being a very attractive and potentially safe — transit haven for drug traffickers from all over the world. Such a consequence is to our mind, absurd and contrary to international comity and certainly never intended by the legislature.

[16] Having carefully scrutinised the evidence on record and having carefully examined the judgment of the learned trial judge, we are entirely satisfied that Isidro's conviction is safe. In the result, Isidro's appeal is dismissed. The conviction and sentence on him are affirmed.

Appeal dismissed.

Reported by Kanesh Sundrum